

(2014) 01 AHC CK 0281
In the Allahabad High Court

Case No : Civil Misc. Writ Petition Nos. 64278 and 64282 of 2008

Mohan Lal and Another

APPELLANT

Vs

Additional District Judge, Court No. 4 and Others

RESPONDENT

Date of Decision : 21-01-2014

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 20(2)(a), 21, 21(1), 21(1)(a)

Citation : (2014) 3 ADJ 296 : (2014) 5 ALJ 140 : (2014) 103 ALR 550

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Arvind Srivastava and Tarun Agrawal, Advocate for the Appellant;
Tarun Verma, P.C. Srivastava, S.C. and Vipin Sinha, Advocate for the Respondent

Judgement

Sudhir Agarwal, J.—Both these matters involve common facts and questions of law, and, therefore, have been heard together and are being decided by this common judgment. Heard Sri Arvind Srivastava, learned counsel for petitioners, and Sri Vipin Sinha, learned Senior Advocate, assisted by Sri Tarun Verma and Sri P.C. Srivastava, Advocates, appearing for contesting respondents.

2. The writ petitions have arisen from the judgment dated 31.1.2007 passed by Prescribed Authority/Judge, Small Cause Court, Gorakhpur in P.A. Case No. 13 of 2007 allowing application of landlords u/s 21(1)(a) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as "Act, 1972") releasing shop in dispute in their favour. The aforesaid judgment has been confirmed in Appeal by Additional District Judge, Court No. 2 Gorakhpur vide judgment dated 28.11.2008 whereby it has dismissed petitioners-tenants' Rent Appeals No. 2 of 2007 and 4 of 2007.

3. The dispute relates to shops situated at Gorakhnath Road, Old Gorakhpur City, Gorakhpur. Three sons of Mewa Lal Gupta, i.e., Ashok Kumar, Rakesh Kumar and Rajesh Kumar, preferred an application u/s 21(1)(a) of Act, 1972 before Prescribed Authority, Gorakhpur stating that petitioner's father Mewa Lal Gupta

is running Sweetmeats shop in the name of M/s. Shyam Mishthan, which is shown as Shop-A in Sketch Map of site. Earlier the family was joint but with the passage of time and increase of members of family, father and sons have separated themselves including their business and occupation. Petitioners purchased house marked as v c l n in the Sketch Map vide registered sale-deed dated 3.4.1999 from its owner Ashok Kumar, son of Lajpat Prasad. At the ground floor of the aforesaid house, there are four shops. One, Shop-A, alongwith one in vicinity, where petitioners' father is running shop of Sweets, namely, Shyam Mishthan, while in rest two shops, there are two tenants, the middle one is in the tenancy of Mohan Lal, petitioner in writ petition no 64278 of 2008 and another, in the tenancy of Zaheer, petitioner in writ petition no 64282 of 2008. The landlords Rakesh and Rajesh, both require the two shops under the tenancy of Mohan Lal and Zaheer for commencing their own business and, therefore, it was requested that both the shops be released in their favour by directing the two tenants to vacate the shops in their possession.

4. This application was contested by petitioners, filing their separate objections, wherein it was pleaded that besides the shops in dispute, landlords have several other property where they can conveniently run their business and, therefore, neither their need is genuine and bona fide nor balance of convenience lies in their favour. It is also said that in the vicinity of Shop-A, there is another shop owned by Sri Mewa Lal, which is vacant and can be used by applicants-landlords for running their business.

5. Prescribed Authority found that most of the properties which were pleaded by tenants that the same are available to landlords, actually belong to Mewa Lal, who was running his business therein and tenants could not show that applicants-landlords had any right over that property unless their father Mewa Lal himself permit. He also found that the sons if have separated, and want to settle themselves, independently, in their own business, their need cannot be clubbed with the resources of father. The requirement of sons, who are landlords in respect to property in dispute, independently, will have to be considered in their own rights. Trial Court discussed the matter in detail and found that case set up by applicants-landlords, was genuine, so far as their personal need is concerned, and comparative hardship also lies in their favour. Consequently, vide judgment dated 31.1.2007, it allowed the application and directed petitioners to vacate shops in dispute, within one month. Petitioners preferred two separate appeals. Both have been dismissed by Lower Appellate Court vide judgments dated 28.11.2008.

6. Sri Arvind Srivastava, learned counsel for petitioners, assailed the impugned judgments on various grounds. Firstly he contended that a single application u/s 21(1)(a) of Act, 1972 for two separate tenancies, which was in possession of different tenants, is not maintainable, and, it is a case of complete misjoinder of cases which goes to the root of the matter. Hence, the entire proceedings are liable to be quashed. He placed reliance on a Division Bench decision of this

Court in Ram Chandra Vs. Judge , Small Cause Court and Others .

7. On the contrary, Sri Naveen Sinha, learned Senior Advocate, contested this aspect and said that for the purpose of Section 21(1)(a) of Act, 1972, there is no bar that a common application against more than one tenant cannot be filed and placed reliance on another single judge decision of this Court in Jagdish Chandra Yadav Vs. I Additional District Judge and Others, .

8. From the perusal of judgments cited at the bar, on both the sides, I find that in Ram Chandra v. Judge Small Cause (supra), a suit u/s 20(2)(a) of Act, 1972 was filed in respect to two different agreements of tenancies though both the tenements were part of the same building. Hon''ble R.M. Sahai, J. (as his Lordship then was), said:

For instance, if there are ten rooms in a building, and each is let out separately, then each room is a building for purposes of this Act. What is decisive, however, is the agreement entered between landlord and tenant. The agreement has to be in relation to a building, where there are two agreements for two different rooms may be in the same building then two agreements come into being, two separate tenements are created. It cannot be disputed that one suit against two tenants cannot be filed. Similarly one suit against two tenements of the same tenant cannot be filed. It shall be bad for joining two different cause of action.

9. In Jagdish Chandra Yadav (supra), the issue up for consideration before the Court was in the context of an application filed u/s 21(1) of Act, 1972. In this regard, Court said that there is nothing in Section 21(1) of the Act, 1972 to show that law envisages a separate application against each tenant. It further discussed the matter as under:

Section 21 of the Act stipulates that a landlord has to make an application for seeking eviction of a tenant from a building under tenancy on grounds mentioned in clauses (a) and (b) of Section 21(1) of the Act. The use of the words "an application" and "a tenant" does not mean that there has to be an application for each tenant to be evicted. What is emphasized is that the order of eviction of a tenant from a building under tenancy can only be passed if the landlord makes an application setting forth one or more than one grounds mentioned in clauses (a) and (b). It is well-settled that the word used in singular may be read in plural and vice versa. The words "an application" only emphasise that there must be one application at least before an order u/s 21(1) can be passed. Similarly, the words "a tenant" include the particular tenant against whom the eviction was sought. Assuming that a landlord has given on tenancy a building to one or more tenants, the law does not envisage that the eviction can be sought only against one of them. The eviction can be sought against the entire body of tenants who hold that building under tenancy. Thus, the words "a tenant" do not relate to one single tenant but to the particular tenant against whom eviction is sought. There may be one or more tenants in a tenancy. Thus, the words "an application" and "a tenant" do not mean that there has to be a separate application for each

tenant.

4. Further, where there are more than one tenant in a building and eviction of each one of them is sought on the same ground or cause of action, one application would be sufficient. There is nothing in Section 21(1) of the Act to show that the law envisages a separate application against each tenant. In the present case, the building comprised of two rooms and a Verandah. It has two tenants. The entire building was sought to be demolished, as it was in a dilapidated condition so that the petitioner could build a fresh building. The ground for the eviction was the same against both of them. Further, in the present case, the two tenants had filed a common written statement. They had engaged a common lawyer. They had not raised any objection as to the maintainability of the application before the Prescribed Authority. They had jointly led evidence. Thus, their plea at the appellate stage that the application was not maintainable on the ground that there should have been two applications was devoid of merits. An objection as to the maintainability of the application ought to be taken at the very first opportunity. No such objection was taken at the time when the written statement was filed. I, therefore, do not see that the tenants were justified in raising this objection before the appellate Court and their objection ought to have been rejected on this ground alone. In my opinion, a common application for the eviction of the two tenants from a building which was sought to be demolished for the purpose of reconstruction was perfectly maintainable and was in accordance with law.

10. Having gone through the aforesaid judgments carefully, I find that a single application u/s 21(1) of Act, 1972, per se, may not be bad or illegal but depending on the ground on which the application is filed and other relevant reasons. There may be a case of joinder of different cause of action so as to require that separate applications should be filed. No general proposition either way, can be laid down. The ground on which the application was filed in Jagdish Chandra Yadav (supra) was that entire building, being in dilapidated condition, need be demolished, and, therefore, the tenants should be evicted. The building consisted of two rooms and a veranda. It had two tenants. The entire building was sought to be demolished on the ground that it is in dilapidated condition, so that landlord may build a new building. Therefore, the ground on which building was required to be vacated was common to all the tenants. No different facts were to be pleaded or proved by the parties. But when an application is filed u/s 21(1)(a) of Act, 1972, on the ground of personal need, the landlord has to show not only bonafide of his personal need, but the question of comparative hardship also. The issue of comparative hardship vis-?-vis different tenants, would envisage different facts, pleadings and other relevant aspects. In this context, two different tenants cannot be treated at par and, therefore, in my view, such an application would not be permissible, otherwise it will create lot of complications in disposal of matter, as would be evident in the case in hand. A handy illustration is evident from appellate judgment. The Appellate Court's judgment in Writ Petition No. 64282 of 2008 shows that here he was dealing with

the P.A. Rent Appeal No. 2 of 2007 which was filed on behalf of Zaheer and this fact he has mentioned at page 296 of the paper book that this appeal has been preferred by Opposite party No. 1, Zaheer, but then on page 297, it has said that the present appellant Mohan Lal in his objection has said something, and everywhere he has referred to the appellate Mohan Lal, of whose case, he has discussed in the entire order and there is no discussion about the case set up by Zaheer, who was the actual appellant therein. When pointed out, Sri Navin Sinha, learned Senior Advocate, also could not give any effective reply to this and said that it may be a typing mistake.

11. When the Appellate Court has discussed the matter of only one tenant, and while discussing appeal of Zaheer, he has treated him as if the appeal is of Mohan Lal. It is thus clear that there is no separate consideration of two cases, set up by two different tenants. The Appellate Court has clubbed and intermingled the facts and pleadings of two different tenants, which vitiates the very consideration of appeals on his part.

12. However, I am not deciding these writ petitions only on this ground, since there are some further aspects of the matter, which need be discussed at length. It is admitted by the parties that Sri Mewa Lal has died, intestate, during the pendency of this writ petition. Now his entire property has devolved upon his legal heirs, i.e., widow and sons who are applicants-landlords in both these cases. Whatever defence was available in respect to property and shops owned and possessed by Mewa Lal, now is no more available, since all that property, now, jointly belong to applicant-landlords alongwith their mother and they are now co-owner thereof. Therefore, the availability of various other properties and shops to applicants-landlords is now well evident.

13. These subsequent events, in my view, would alter the entire chain of facts and scenario substantially which need be discussed and considered by Court below afresh. It cannot be doubted that subsequent events, which have material bearing on the matter, have to be given due consideration.

14. The question as to why and in what circumstances, subsequent activities/ events can be looked into, has been considered time and again by Apex Court as well as this Court also.

15. A three-Judge Bench of Apex Court in Pasupuleti Venkateswarlu Vs. The Motor and General Traders, , permitted cognizance of subsequent events, though very cautiously, and said:

We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the Court can, and in many cases must, take subsequent cautious cognizance of events and developments subsequent to the institution of the proceedings provided the rules of fairness to both sides are scrupulously obeyed.

(emphasis added)

16. Again in *Hasmat Rai and Another Vs. Raghunath Prasad*, , the cognizance of subsequent events was held permissible provided it wholly satisfy the requirement of petitioner/landlord who petitioned for eviction on the ground of personal requirement. The Court said:

Therefore, it is now incontrovertible that where possession is sought for personal requirement it would be correct to say that the requirement pleaded by the landlord must not only exist on the date of the action but must subsist till the final decree or an order for eviction is made. If in the meantime events have cropped up which would show that the landlords requirement is wholly satisfied then in that case his action must fail and in such a situation it is incorrect to say that as decree or order for eviction is passed against the tenant he cannot invite the Court to take into consideration subsequent events.

(emphasis added)

17. In *Ramesh Kumar Vs. Kesho Ram*, , a two-Judge Bench of Apex Court said that normal rule is that rights and obligations of the parties are to be determined as they were when the lis commenced. The only exception is that the Court is not precluded from moulding relief's appropriately in consideration of subsequent events provided such events had an impact on those rights and obligations. Hon''ble M.N. Venkatachalia, J (as his Lordship then was) observed:

The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the lis. But this is subject to an exception. Wherever subsequent events of fact or law which have a material bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief occur, the Court is not precluded from taking a "cautious cognisance" of the subsequent changes of fact and law to mould the relief.

18. In *Gaya Prasad Vs. Sh. Pradeep Srivastava*, , the Court said that for the malady of judicial system of delayed justice, a landlord should not suffer. Every day may result in some kind of development and, therefore, every subsequent development would not deny claim of landlord on the pretext of a subsequent development since no one can be expected to stay idle for all times to come till a litigation is going on. It may happen that the lifetime of litigation may be more than that of litigant-landlord himself. Therefore, the judicial tardiness should not cause an irreparable loss to a landlord. It would be unjust to shut the door of justice to a landlord on the end of litigation after passing through various levels of litigation to deny him justice and relief sought only on the ground of certain developments occurred pendente lite because the tenant has been successful in prolonging litigation for an unduly extended long period. However, if the cause of action is submerged in such subsequent events, in other words, if the subsequent events are such as to satisfy the very requirement of landlord in its entirety, the same can be seen and there is no allergy in considering and taking note of subsequent events of importance which may justify remoulding of relief

not on account of mere pendency of litigation but on account of the position and status of landlord and other relevant factors.

19. This matter was further examined in detail in Kedar Nath Agrawal (Dead) and Another Vs. Dhanraji Devi (Dead) by LRs. and Another, and having considered a number of authorities on the subject, the Apex Court, in para 16 of judgment, crystallised three aspects when subsequent events can be taken note by a Court of law, namely:

(i) The relief claimed originally has, by reason of subsequent change of circumstances, become inappropriate; or

(ii) It is necessary to take notice of subsequent events in order to shorten litigation; or

(iii) It is necessary to do so in order to do complete justice between the parties.

20. In view of above binding precedents and in the facts and circumstances of the case, I am of the view that let this matter again be considered by Appellate Court in the light of subsequent events also. Both the writ petitions are partly allowed. The impugned appellate judgments dated 28.11.2008 in P.A. Rent Appeals No. 4 and 2 of 2007 are hereby quashed. Matter is remanded to Appellate Court to re-consider afresh, in view of observations made hereinabove and taking into account the subsequent events, as discussed above, and pass a fresh order in accordance with law.